No. 980

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UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No. 16886

deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, PROVOSTY A. DAYRIES, Individually and as Superintendent of Police of the City of New Orleans, and NEW ORLEANS PUBLIC SERVICE INC., a corporation,
Appellants,

versus

ABRAHAM L. DAVIS, JR., and WILLIAM R. ADAMS,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

(Original Record Received)

COURT OF APPEALS
FILED
SEP 18 1957

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 6418
Civil Action

ABRAHAM L. DAVIS, JR., and
WILLIAM R. ADAMS

versus

deLESSEPS S. MORRISON, ETC., ET AL.

APPEARANCES:

A. P. Tureaud, Esq.,
Earl J. Amedee, Esq.,
Israel M. Augustine, Jr., Esq.,
Louis Berry, Esq.,
Robert F. Collins, Esq.,
Alvin Jones, Esq.,
Revius O. Ortique, Jr., Esq.,
A. M. Trudeau, Jr.,
Attorneys for Plaintiffs - Appellees

Alvin J. Liska, City Attorney
Joseph H. Hurndon, Asst. City Attorney
Jack P. F. Gremillion, Attorney Gen. State of La.
George M. Ponder, 1st Asst. Attorney Gen. State of La.
William P. Schuler, Asst. Attorney Gen. State of La.
Gibbons Burke, Esq., Attorney for
New Orleans Public Service, Inc.
Arthur J. Waechter, Esq., Attorney for
New Orleans Public Service, Inc.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Court of Appeals for the Fifth Circuit, returnable within forty (40) days from the 21st day of June, 1957, at the City of New Orleans, Louisiana.

Extension of time granted by the Honorable United States District Court for the Eastern District of Louisiana, bringing the return day up to and including September 28, 1957.

COMPLAINT

(Number and Title Omitted)

Filed: February 1, 1957

1.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, this being a civil action arising under the Constitution and laws of the United States, to wit, the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 42, United States Code, Section 1981, wherein the matter in controversy exceeds the sum of Three Thousand and no/100 Dollars ($3,000,00), exclusive of interest and costs.

2.

The jurisdiction of this Court is also invoked under

Title 28, United States Code, Section 1343(3). This action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof, to redress the deprivation under color of a state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States, to wit, the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 42, United States Code, Section 1981, providing for the equal rights of citizens and all other persons within the jurisdiction of the United States.

3.

The jurisdiction of this Court is also invoked under Title 28, United States Code, Section 2281. This is an action for an interlocutory and permanent injunction, restraining, upon the grounds of their unconstitutionality under the due process and equal protection clauses of the Constitution of the United States, the enforcement of LSA-R.S. 45:194-196 inclusive, and LSA-R.S. 45:731-733 inclusive, statutes of the State of Louisiana as more fully appear hereinafter.

4.

This is a proceeding for a declaratory judgment under Title 28, United States Code, Sections 2201 and 2202, to declare the rights and legal relations of the parties in the matter in controversy, to wit:

> Whether the enforcement, execution or operation of LSA-R.S. 45:194, 45:195, 45:196, 45:731,

45:732 and 45:733, which require the segregation of plaintiffs and all other Negro citizens solely because of race and color on buses, street cars or street railways and trolley buses operating within the City of New Orleans and the State of Louisiana, deny them their rights, privileges and immunities as citizens of the United States, due process of law and equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and rights and privileges secured to them by Title 42, United States Code, Section 1981 and 1983, and whether the enforcement, execution and operation of the said statutes are for the aforesaid reasons unconstitutional and void?

5.

Plaintiffs bring this action pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure for themselves and on behalf of all other Negro citizens similarly situated whose numbers make it impracticable to bring them before this Court; they seek common relief based upon common questions of law and fact.

6.

Plaintiffs are Negroes and citizens of the United States and the State of Louisiana. Plaintiffs, as residents of the City of New Orleans, Orleans Parish, State of Louisiana, use the public transportation system operated by the New Orleans Public Service, Inc., in the City of New Orleans and intend to use the same in the future.

7.

(a) Defendant, DeLesseps S. Morrison, is a resident of the City of New Orleans, Orleans Parish, State of Louisiana, and is Mayor of the City of New Orleans. Paul V. Burke, Fred J. Cassibry, Glenn P. Classen, Walter M. Duffourc, James E. Fitzmorris, Jr., and Victor H. Schiro are residents of the City of New Orleans, Parish of Orleans, State of Louisiana, and are all members of the City Council of the City of New Orleans. This action is brought against the defendants named above as individuals and in their official capacities in which they are vested with the power to regulate the defendant, the New Orleans Public Service, Inc., pursuant to Section 4-206(c) and Section 2-101, Home Rule Charter of the City of New Orleans.

(b) The defendant, Paul L. Ristroph, is a resident of the City of New Orleans, Parish of Orleans, State of Louisiana and is Director of Utilities, Department of Utilities of the City of New Orleans. This action is brought against the above-named defendant individually and in his official capacity in which he is vested with the power to supervise and investigate the operations of public utilities in the City of New Orleans, pursuant to Section 4-1601, Home Rule Charter of the City of New Orleans.

(c) The defendant, Provosty A. Dayries, is a resident of the City of New Orleans, Parish of Orleans, State of Louisiana, and is Superintendent of Police of the City of New Orleans. This action is brought against the above-named defendant, individually and in his official capacity, in which he is vested with the power to enforce the ordinance of the City and all laws, and prevent their violation,

pursuant to Section 4-501, Home Rule Charter of the City of New Orleans.

(d) The defendant, George S. Dinwiddie, is a resident of the City of New Orleans, Parish of Orleans, State of Louisiana, and is the President of the New Orleans Public Service, Inc.

(e) The defendant, the New Orleans Public Service, Inc., is a corporation organized and existing under the laws of the State of Louisiana with its principal place of business in the City of New Orleans and is engaged in operating within the said city, buses, street cars or street railways and trolley buses for the transportation of passengers for hire pursuant to a franchise issued by the said City of New Orleans.

(f) Defendants, DeLesseps S. Morrison, Paul V. Burke, Fred J. Cassibry, Glenn P. Classen, Walter M. Duffourc, James E. Fitzmorris, Jr., Victor H. Schiro, Paul F. Ristroph and Provosty A. Dayries, seek to enforce the said statutes and to compel plaintiffs and all other Negro citizens of the City of New Orleans to comply with the provisions of the aforesaid unconstitutional statutes and pursuant to the aforesaid statutes and the orders of said defendants, the plaintiffs, and all other Negro citizens who fail to observe and comply with these statutes, are subject to arrest, fine and imprisonment.

(g) Defendants, George S. Dinwiddie, President of the New Orleans Public, Inc., and the New Orleans Public Service, Inc., acting under color of and in purported compliance with the statutes hereinabove set out, have operated

and now operate their buses, street cars or street railways and trolley buses on the basis of racial segregation in violation of rights guaranteed to the plaintiffs and other Negro citizens under the Constitution and laws of the United States, to wit: the privileges and immunities of citizens of the United States, due process of law and the equal protection of the law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Section 1981 and 1983.

(h) Defendant, New Orleans Public Service, Inc., acting under color of law and in purported compliance with the statutes hereinabove set out, maintain on its buses, street cars or street railways and trolley buses a sign for the purpose of racial segregation which sign reads "For Colored Patrons Only" and behind which sign plaintiffs and all other Negro citizens of the City of New Orleans are compelled to seat themselves, or be so assigned to sit, by agents, servants, or employees of defendant, New Orleans Public Service, Inc., in compliance with the unconstitutional statutes, LSA-R.S. 45:194-196, inclusive, and LSA-R.S. 45:731-733, inclusive.

8.

LSA-R.S. 45:194-196, inclusive, and LSA-R.S. 45:731-733, inclusive, provide as follows:

> "All persons carrying passengers for hire in their buses, carriages or vehicles in this state shall provide equal but separate accommodations for the white and colored races by designating separate seats or compartments so as to secure separate accommodations for the white and colored

races; no person shall be permitted to occupy seats or compartments other than the ones so designated." (R.S. 45:194).

"The person in charge of busses, carriages or vehicles mentioned in R.S. 45:194 shall assign each passenger to a seat or compartment used for the race to which such passenger belongs.

"Any passenger insisting upon going into a seat or compartment to which by race he does not belong, shall be fined twenty-five dollars or imprisoned for not more than thirty days.

"If any passenger refuses to occupy the seat or compartment to which he is assigned by the person in charge of such bus, carriage or vehicle, the person in charge may refuse to carry the passenger on his car or cars, and for such refusal neither he nor the person he represents shall be held for damages in this state.

"Any person in charge of a bus, carriage or vehicle insisting on assigning a person to a seat or compartment other than the one set aside for the race to which the passenger belongs, shall be fined twenty-five dollars or imprisoned for not more than thirty days." (LSA-R.S. 45:195).

All officers and directors of persons carrying passengers for hire over the public highways of the state, refusing or neglecting to comply with the provisions of R.S. 45:194 through 45:195 shall be

fined not less than fifty dollars, nor more than three hundred dollars, or imprisoned for not less than ten days nor more than sixty days, or both."

"All street railway companies carrying passengers in cars in this state shall provide equal but separate accommodations for the white and colored races by providing two or more cars or by dividing the cars by wodden or wire screen partitions so as to secure separate accommodations for the white and colored races. No person shall be permitted to occupy seats in cars or compartments other than the ones assigned to them on account of the race to which they belong."
(LSA-R.S. 45:731).

"The officers of street railway cars shall assign each passenger to the car or compartment used for the race to which the passenger belongs.

"Any passenger insisting upon going into a car or compartment to which by race he does not belong shall be fined twenty-five dollars, or imprisoned for not more than thirty days, and any officer of any street railway insisting on assigning a passenger to a car or compartment other than the one set aside for the race to which the passenger belongs, shall be fined twenty-five dollars, or imprisoned for not more than thirty days.

"If any passenger refuse to occupy the car or compartment to which he is assigned by the officer of such street railway, the officer may refuse to

carry such passenger on his car, and for such refusal neither he nor the street railway company which he represents shall be liable for damages." (LSA-R.S. 45:732).

"All officers and directors of street railway companies refusing to comply with R.S. 45:731 and 45:732 shall be fined not less than one hundred dollars, or imprisoned for not less than sixty days nor more than six months. Any conductor or other employee of a street railway car having charge of same, who refuses to carry out the provisions of R.S. 45:731 and 45:732 shall be fined not less than twenty-five dollars, or imprisoned for not less than ten days nor more than thirty days for each offense. All street railway corporations carrying passengers in this state shall keep this law posted in a conspicuous place in each car and at their transfer stations.

"Nothing in R.S. 45:731 and 45:732 shall apply to nurses attending children of the other race." LSA-R.S. 45:733.)

9.

In a conference held on January 9, 1957, with defendants, George S. Dinwiddie, President of the New Orleans Public Service, Inc., and the New Orleans Public Service, Inc., plaintiffs requested the said defendants to discontinue the operation of their buses, street cars or street railways and trolley buses on the basis of racial segregation. De-

fendant, the New Orleans Public Service, Inc., gave the following answer in response to the said request, to wit:

> "Our purpose is to provide safe, efficient, economical and courteous transit service for all the citizens in New Orleans. The United States Supreme Court decision was rendered in a case arising in Montgomery, Alabama. Public Service is chartered under the laws of the State of Louisiana. The applicable laws of Louisiana have not been reviewed by the United States Supreme Court and must, therefore, be complied with. In our judgment, Public Service can not presume to determine judicial and regulatory matters.
>
> "In carrying out our purpose of providing safe, low-cost transit service, we are not at liberty to use our own discretion in all decisions about operations. We must operate within the framework of applicable State and local laws. Enforcement of the law is a responsibility of the State and local officials.
>
> "Under these circumstances, the company is continuing its present operating practices."

10.

Plaintiffs, and all other Negro citizens of the City of New Orleans, have been compelled to occupy segregated sections of the buses, street cars or street railways and trolley buses operated by defendant New Orleans Public Service, Inc., and have suffered great injury, inconvenience

and humiliation as a result of the denial to them of their constitutional rights to use said facilities on an unsegregated basis without fear or intimidation.

11.

Plaintiffs, and all other Negro citizens of the City of New Orleans, are threatened with irreparable injury by reason of the conditions herein complained of. They have no plain, adequate or complete remedy to redress these wrongs other than by this suit for an injunction. Any other remedy would be attended by such uncertainties and delays as to deny substantive relief and would involve a multiplicity of suits and cause further irreparable injury, damage and inconvenience to plaintiffs and all other Negro citizens of the City of New Orleans.

WHEREFORE, plaintiffs pray that:

(1) The Court convene a three-judge court as provided by Title 28, United States Code, Section 2284.

(2) The Court advance this complaint on the docket and order a speedy hearing thereof according to law and that upon such hearing the Court enter a temporary injunction to enjoin and restrain the defendants and each of them from enforcing LSA-R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733, of the State of Louisiana, and any and all customs, practices and usages pursuant to which plaintiffs and all other Negro citizens of the City of New Orleans are segregated in and on the buses, street cars or street railways and trolley buses of the New Orleans Public Service, Inc., on the ground that such statutes

are null and void and in violation of the Fourteenth Amendment to the Constitution of the United States.

(3) The Court upon a final hearing of this cause will:

(a) Enter a final judgment and decree that will declare and define the legal rights of the parties in relation to the subject matter of this controversy.

(b) Enter a final judgment and decree that will declare that LSA-R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733 of the State of Louisiana are unconstitutional and therefore null and void in that they deny to the plaintiffs and all other Negro citizens of the City of New Orleans privileges and immunities of citizens of the United States, due process of law and the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and the rights and privileges secured to them by Sections 1981 and 1983 of Title 42, United States Code.

(c) Enter a final judgment and decree enjoining the defendants, their agents, servants and employees from enforcing the aforesaid statutes on the ground that they are unconstitutional and therefore null and void as aforestated.

(4) The Court allow plaintiffs their cost and that plaintiffs have such other and further relief as may appear just and proper in the premises.

(Signed) A. P. TUREAUD
A. P. TUREAUD
1821 Orleans Avenue
New Orleans 16, Louisiana

ATTORNEY FOR
PETITIONERS

EARL J. AMEDEE
ISRAEL M. AUGUSTINE, JR.
LOUIS BERRY
ROBERT F. COLLINS
ALVIN JONES
REVIUS O. ORTIQUE, JR.
A. M. TRUDEAU, JR.

New Orleans, Louisiana
OF COUNSEL

VERIFICATION

STATE OF LOUISIANA)
PARISH OF ORLEANS)

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS, being first duly sworn, depose and say that they are the PETITIONERS in the above and foregoing complaint; that they have read the same and that all of the facts and allegations contained therein are true and correct.

(Signed) ABRAHAM L. DAVIS, JR.
Abraham L. Davis, Jr.

(Signed) WILLIAM R. ADAMS
William R. Adams

SWORN TO AND SUBSCRIBED BEFORE ME THIS 1st DAY OF FEBRUARY, 1957.

A. P. TUREAUD
NOTARY PUBLIC

ANSWER OF N. O. PUBLIC SERVICE, INC.

(Number and Title Omitted)

Filed: March 22, 1957

NOW INTO COURT, through undersigned counsel comes New Orleans Public Service Inc., named defendant herein, and for answer to the complaint with respect avers:

1.

Defendant denies the allegations of paragraphs 1, 2, 3, 4, 5, 10, and 11.

2.

Defendant denies the allegations of paragraph 7, except it admits:

a.) that the defendants named in subparagraph (a) are residents of the City of New Orleans, State of Lou-

isiana and hold the respective offices described in said subparagraph and are vested with the power and authority to regulate this defendant;

b.) that the defendant named in subparagraph (b) is a resident of the City of New Orleans, State of Louisiana, and holds the office described in said subparagraph and is vested with the power to supervise the operations of this defendant;

c.) that the defendant named in subparagraph (c) is a resident of the City of New Orleans, is the Superintendent of Police of the City of New Orleans and is vested with the power and duty to enforce the ordinances of the City of New Orleans and the laws of the State of Louisiana;

d.) that the defendant named in subparagraph (d) resides in the City of New Orleans and is the President of this defendant;

e.) that this defendant is organized and exists under the laws of the State of Louisiana with its principal office and place of business in the City of New Orleans and is engaged in the business of operating within the City of New Orleans street cars, buses and trolley coaches for the transportation of passengers pursuant to franchises and indeterminate permits granted by said City and also operates one trolley coach line in the Parish of St. Bernard and two bus lines in the Parish of Jefferson; and

f.) that this defendant does maintain on its street

cars, buses and trolley coaches signs for the purpose of providing separate but equal accommodations for the white and colored races in compliance with the laws of the State of Louisiana.

3.

Defendant admits the allegations of paragraphs 6, 8, and 9.

WHEREFORE, defendant prays that plaintiffs' suit be dismissed at their cost.

(Signed) GIBBONS BURKE
Gibbons Burke of
Chaffe, McCall, Phillips,
Burke & Hopkins
1500 National Bank of
Commerce Bldg.
New Orleans, Louisiana

(Signed) A. J. WAECHTER, JR.
Arthur J. Waechter of
Jones, Walker, Waechter,
Poitevent & Denegre
1547 National Bank of
Commerce Bldg.
New Orleans, Louisiana

ANSWER OF GEORGE S. DINWIDDIE

(Number and Title Omitted)

Filed: March 22, 1957

NOW INTO COURT, through undersigned counsel, comes GEORGE S. DINWIDDIE, named defendant herein, and for answer to the complaint with respect avers:

FIRST DEFENSE

That the complaint filed herein fails to state a claim against this defendant upon which relief can be granted.

SECOND DEFENSE

1.

Defendant denies the allegations of paragraphs 1, 2, 3, 4, 5, 10 and 11.

2.

Defendant denies the allegations of paragraph 7 except he admits:

a.) that the defendants named in subparagraph (a) are residents of the City of New Orleans, State of Louisiana and hold the respective offices described in said subparagraph and are vested with the power and authority to regulate the defendant, New Orleans Public Service Inc.;

b.) that the defendant named in subparagraph (b) is a resident of the City of New Orleans, State of Louisiana, and holds the office described in said subparagraph and is vested with the power to supervise the operations of the defendant, New Orleans Public Service Inc.;

c.) that the defendant named in subparagraph (c) is a resident of the City of New Orleans, is the Superintendent of Police of the City of New Orleans and is vested with the power and duty to enforce the ordinances of the City of New Orleans and the laws of the State of Louisiana;

d.) that this defendant named in subparagraph (d) resides in the City of New Orleans and is the President of the New Orleans Public Service Inc.;

e.) that the defendant, New Orleans Public Service Inc., is organized and exists under the laws of the State of Louisiana with its principal office and place of business in the City of New Orleans and is engaged in the business of operating within the City of New Orleans street cars, buses and trolley coaches for the transportation of passengers pursuant to franchises and indeterminate permits granted by said City and also operates one trolley coach line in the Parish of St. Bernard and two bus lines in the Parish of Jefferson; and

f.) that the defendant, New Orleans Public Service Inc., maintains on its street cars, buses and trolley coaches signs for the purpose of providing separate but equal accommodations for the white and colored

races in compliance with the laws of the State of Louisiana.

3.

Defendant admits the allegations of paragraphs 6, 8 and 9.

WHEREFORE, defendant prays that plaintiffs' suit be dismissed at their cost.

(Signed) GIBBONS BURKE
Gibbons Burke of
Chaffe, McCall, Phillips,
Burke & Hopkins,
1500 National Bank of
Commerce Bldg.,
New Orleans, Louisiana.

(Signed) A. J. WAECHTER, JR.
ARTHUR J. WAECHTER of
Jones, Walker, Waechter,
Poitevent & Denegre,
1547 National Bank of
Commerce Bldg.,
New Orleans, Louisiana.

MOTION OF CERTAIN DEFENDANTS TO DISMISS UNDER RULE 12 B

(Number and Title Omitted)

Filed: March 22, 1957

Defendants, deLesseps S. Morrison, Individually and a Mayor of the City of New Orleans; Paul Burke; Fred J. Cassibry; Glen P. Classen; Walter M. Duffourc; James E. Fitzmorris, Jr. and Victor H. Schiro, Individually and as Councilmen of the City of New Orleans; Paul L. Ristroph, Individually and as Director of Utilities, Department of Utilities of the City of New Orleans; Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, move the Court as follows:

I.

To dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted.

II.

To dismiss the action on the grounds that the Court is without jurisdiction.

III.

To dismiss the action on the grounds that defendants are not proper parties since they are not vested with enforcement powers.

(Signed) HENRY B. CURTIS
Henry B. Curtis, City Attorney
City Hall, New Orleans, La.

(Signed) ALVIN J. LISKA
Alvin J. Liska, Assistant City
Attorney and Trial Attorney

(Signed) JACK P. F. GREMILLION
Jack P. F. Gremillion,
By W. P. Schuler
Attorney General

(Signed) WILLIAM SCHULER
William Schuler,
Assistant Attorney General

(Signed) GEORGE M. PONDER
George M. Ponder
First Asst. Atty General
By W. P. SCHULER

MOTION OF PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS

(Number and Title Omitted)

Filed: April 10, 1957

Plaintiffs Abraham L. Davis, Jr. and William R. Adams move the Court that judgment be rendered for plaintiffs herein on the pleadings for the reason that the answer of defendants New Orleans Public Service, Inc., and George S. Dinwiddie, individually and as president of the New Orleans Public Service, Inc., together with the pleadings on behalf of the City of New Orleans and other defendants herein show that plaintiffs are entitled to judgment as prayed for in their complaint.

(Signed) A. P. TUREAUD
A. P. Tureaud
Attorney for Plaintiffs
1821 Orleans Avenue
New Orleans, Louisiana

OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

(Number and Title Omitted)

Filed: April 15, 1957

Defendants, deLesseps S. Morrison, Individually and a Mayor of the City of New Orleans; Paul Burke; Fred J. Cassibry; Glen P. Clasen; Walter M. Duffourc; James E. Fitzmorris, Jr. and Victor H. Schiro, Individually and as Councilmen of the City of New Orleans; Paul L. Ristroph, Individually and as Director of Utilities, Department of Utilities of the City of New Orleans; Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, move the Court as follows; with full reservation to the motions to dismiss filed under Rule 12-B opposes plaintiff's motion for judgment on the pleadings on the following grounds, to-wit:

I

Defendants herein have not filed any answer, but merely have opposed plaintiffs' petition under Rule 12-B.

II

In the alternative in the event that this Court is of the opinion that plaintiffs' motion should be treated as a summary judgment, then in that event defendants herein pray for the dismissal of said motion on the grounds that plaintiffs' pleadings were not filed and served at least ten days

before the time fixed for the hearing as provided for under Section C of Rule 56.

Defendants herein pray that its motions to dismiss under Rule 12-B be upheld and in the alternative, that the motion by defendants for judgment on the pleadings be dismissed. In the further alternative defendants herein pray that if plaintiffs' motion be considered as a motion for summary judgment, then it likewise be dismissed.

(Signed) HENRY B. CURTIS
HENRY B. CURTIS
City Attorney
City Hall, New Orleans, La.

(Signed) ALVIN J. LISKA
ALVIN J. LISKA,
Assistant City Attorney and
Trial Attorney

(Signed) JACK P. F. GREMILLION
JACK P. F. GREMILLION
Attorney General
By W. P. SCHULER

(Signed) WILLIAM P. SCHULER
WILLIAM SCHULER,
Assistant Attorney General

(Signed) GEORGE M. PONDER
GEORGE M. PONDER,
First Asst. Atty. General
By W. P. SCHULER

MINUTE ENTRY: Wright, J:

April 17, 1957

HEARING ON MOTIONS AND ORDER DISMISSING COMPLAINT AS TO COUNCILMEN OF CITY OF NEW ORLEANS and PAUL L. RISTROP, ETC. & FURTHER ORDER CONTINUING HEARING ON OTHER MOTIONS.

(Number and Title Omitted)

This cause came on this day to be heard on motion of certain defendants to dismiss, and on motion of plaintiffs for judgment on the pleadings and opposition to plaintiffs' motion for judgment on the pleadings.

Present: A. P. Tureaud, Esq.,
Attorney for Plaintiffs

Henry B. Curtis, Esq.,
Alvin J. Liska, Esq.,
William Schuler, Esq.,
Attorneys for Defendants

Argument;

IT IS ORDERED BY THE COURT that the motion to dismiss be and the same is hereby granted as to Paul Burke, Fred J. Cassibry; Glen P. Classen; Walter M. Duffourc; James E. Fitzmorris, Jr., and Victor H. Schiro, Individually and as councilmen of the City of New Orleans; Paul L. Ristrop, Individually and as Director of Utilities, Department of Utilities of the City of New Orleans.

IT IS FURTHER ORDERED that the hearing of other motions be and the same is hereby continued to be re-assigned.

(Signed) J. S. W.

ANSWER OF MAYOR MORRISON and PROVOSTY A. DAYRIES

(Number and Title Omitted)

Filed: April 23, 1957

NOW INTO COURT, through undersigned Counsel comes deLesseps S. Morrison, individually and as Mayor of the City of New Orleans, and Provosty A. Dayries, individually and as Superintendent of the Police of the City of New Orleans, named defendants herein, and with full reservations to the pleadings heretofore filed, and for answer to the complaint with respect avers:

1.

Defendants deny the allegations of paragraphs 1, 2, 3, 4, 5, 10 and 11 of the complaint.

2.

Defendants deny the allegations contained in paragraphs 6 and 9 for lack of sufficient information to justify a belief.

3.

Defendants deny the allegations of paragraphs 7, but admits:

a) Defendant, deLesseps S. Morrison is a resident of the City of New Orleans, Parish of Orleans, State of Louisiana and is Mayor of the City of New Orleans.

c) Defendant, Provosty A. Dayries is a resident of the City of New Orleans, Parish of Orleans, State of Louisiana and is Superintendent of Police of the City of New Orleans.

In answering, defendants aver that the Home Rule Charter defines the duties of defendants.

4.

Defendants admit the allegation contained in paragraph 8 of plaintiffs' complaint.

WHEREFORE, defendants pray that plaintiffs' suit be dismissed at their cost.

(Signed) HENRY B. CURTIS
HENRY B. CURTIS
City Attorney

(Signed) ALVIN J. LISKA
ALVIN J. LISKA
Assistant City Attorney and
Trial Attorney

(Signed) JACK P. F. GREMILLION ajl
JACK P. F. GREMILLION
Attorney General

(Signed) GEORGE M. PONDER ajl
GEORGE M. PONDER
First Assistant Attorney General

(Signed) WILLIAM SCHULER ajl
WILLIAM SCHULER
Assistant Attorney General

MOTION & ORDER DISMISSING COMPLAINT AS TO GEORGE S. DINWIDDIE

(Number and Title Omitted)

Filed: May 2, 1957

NOW COME plaintiffs herein through their attorney, A. P. Tureaud, and defendant George S. Dinwiddie, through his attorneys Gibbons Burke and A. J. Waechter, Jr., and move the Court that in view of the decision of the Court entered into this matter on April 17, 1957, with respect to the individual members of the Council of the City of New Orleans, this action may be dismissed against George S. Dinwiddie.

(Signed) A. P. TUREAUD
A. P. Tureaud,
Attorney for Plaintiffs

(Signed) GIBBONS BURKE
Gibbons Burke

(Signed) A. J. WAECHTER, JR.
A. J. Waechter, Jr.
Attorneys for defendant,
George S. Dinwiddie

ORDER

The foregoing motion considered,

IT IS HEREBY ORDERED that the complaint be and it hereby is dismissed as to defendant George S. Dinwiddie.

New Orleans, La., May 2nd, 1957.

(Signed) J. SKELLY WRIGHT
UNITED STATES
DISTRICT JUDGE

MOTION OF PLAINTIFFS'
FOR SUMMARY JUDGMENT

(Number and Title Omitted)

Filed: May 6, 1957

Plaintiffs, Abraham L. Davis, Jr., and William R. Adams move the Court to enter summary judgment for the plaintiffs in accordance with the provisions of Rule 56 of the

Rules of Civil Procedure, on the ground that the pleadings heretofore filed and the affidavits annexed hereto show that the plaintiffs are entitled to judgment as a matter of law.

(Signed) A. P. TUREAUD
A. P. Tureaud,
Attorneys for Plaintiffs
1821 Orleans Avenue
New Orleans, Louisiana

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

WILLIAM R. ADAMS, being duly sworn states:

That he is the plaintiff in the above entitled action and makes this affidavit in support of an application for summary judgment against the defendants herein.

That he is of the Negro Race.

That he uses and intends to use in the future the public transportation facilities of the City of New Orleans that are operated by the New Orleans Public Service, Inc.

That because he is a Negro he is compelled to sit behind a sign marked "For Colored Patrons Only" when using the said transportation facilities.

That these signs are placed on the said transportation facilities by the New Orleans Public Service, Inc. in compliance with the law of the state of Louisiana which decrees that the races shall be segregated in the use of the said facilities, copies of which law are prominently displayed in the said facilities.

That on January 9, 1957, he and other Negro citizens held a conference with defendant, George S. Dinwiddie, President of the New Orleans Public Service, Inc., at which time the said New Orleans Public Service, Inc. was requested to discontinue the operation of its said facilities on a basis of racial segregation; that to the said request, the following response was given, to wit:

> "Our purpose is to provide safe, efficient, economical and courteous transit service for all the citizens in New Orleans. The United States Supreme Court decision was rendered in a case arising in Montgomery, Alabama. Public Service is chartered under the laws of the State of Louisiana. The applicable laws of Louisiana have not been reviewed by the United States Supreme Court and must, therefore, be complied with. In our judgment, Public Service can not presume to determine judicial and regulatory matters.
>
> "In carrying out our purpose of providing safe, low-cost transit service, we are not at liberty to use

our own discretion in all decisions about operations. We must operate within the framework of applicable State and local laws. Enforcement of the law is a responsibility of the State and local officials.

"Under these circumstances, the company is continuing its present operating practices."

That the above statement was read aloud to affiant and to the other Negro citizens present in said conference, and a copy thereof was given to affiant and to each of the said other Negro citizens present.

That notwithstanding the said request made by affiant and other Negro citizens, defendant, the New Orleans Public Service, Inc., continued to operate and at the present time still operates its transportation facilities on a segregated basis.

(Signed) WILLIAM R. ADAMS

SWORN TO AND SUBSCRIBED BEFORE ME THIS 3rd DAY OF MAY, 1957.

(Signed) ERNEST N. MORIAL
NOTARY PUBLIC

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

STATE OF LOUISIANA
PARISH OF ORLEANS

ABRAHAM L. DAVIS, JR., being duly sworn states:

That he is the plaintiff in the above entitled action and makes this affidavit in support of an application for summary judgment against the defendants herein.

That he is of the Negro Race.

That he uses and intends to use in the future the public transportation facilities of the City of New Orleans that are operated by the New Orleans Public Service, Inc.

That because he is a Negro he is compelled to sit behind a sign marked "For Colored Patrons Only" when using the said transportation facilities.

That these signs are placed on the said transportation facilities by the New Orleans Public Service, Inc. in compliance with the law of the state of Louisiana which decrees that the races shall be segregated in the use of the said facilities, copies of which law are prominently displayed in the said facilities.

That on January 9, 1957, he and other Negro citizens held a conference with defendant, George S. Dinwiddie, President

of the New Orleans Public Service, Inc., at which time the said New Orleans Public Service, Inc. was requested to discontinue the operation of its said facilities on a basis of racial segregation; that to the said request, the following response was given, to wit:

> "Our purpose is to provide safe, efficient, economical and courteous transit service for all the citizens in New Orleans. The United States Supreme Court decision was rendered in a case arising in Montgomery, Alabama. Public Service is chartered under the laws of the State of Louisiana. The applicable laws of Louisiana have not been reviewed by the United States Supreme Court and must, therefore, be complied with. In our judgment, Public Service can not presume to determine judicial and regulatory matters.
>
> "In carrying out our purpose of providing safe, low-cost transit service, we are not at liberty to use our own discretion in all decisions about operations. We must operate within the framework of applicable State and local laws. Enforcement of the law is a responsibility of the State and local officials.
>
> "Under these circumstances, the company is continuing its present operating practices."

That the above statement was read aloud to affiant and to the other Negro citizens present in said conference, and a copy thereof was given to affiant and to each of the said other Negro citizens present.

That notwithstanding the said request made by affiant and other Negro citizens, defendant, the New Orleans Public Service, Inc., continued to operate and at the present time still operates its transportation facilities on a segregated basis.

(Signed) ABRAHAM L. DAVIS, JR.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 3rd DAY OF MAY, 1957.

(Signed) ERNEST N. MORIAL
NOTARY PUBLIC.

DEFENDANTS OPPOSITION TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

Received: May 13, 1957

Defendants, deLesseps S. Morrison, individually, and as Mayor of the City of New Orleans, and Provosty A. Dayries, individually, and as Superintendent of Police of the City of New Orleans, move the Court as follows:

1

Defendants deny that plaintiffs are entitled to summary judgment in accordance with the provisions of Rule 56 of Civil procedure.

2

Defendants aver that there is a substantial issue of fact raised by the pleadings.

3

Defendants aver that the New Orleans Public Service, Inc., should be dismissed as a party defendant since the ultimate relief sought herein is a declaration of the constitutionality of State law and an injunction of the enforcement of that law, and that type of relief can be granted only against the proper legal public authorities responsible for the enforcement of this law.

Defendants herein pray that plaintiffs' motion for summary judgment under Rule 56 be dismissed.

And for all general and equitable relief.

(Signed) HENRY B. CURTIS
HENRY B. CURTIS
OF COUNSEL

(Signed) ALVIN J. LISKA
ALVIN J. LISKA
CITY ATTORNEY

(Signed) JOSEPH H. HURNDON
JOSEPH H. HURNDON
ASSISTANT CITY ATTORNEY

(Signed) JACK P. F. GREMILLION
JACK P. F. GREMILLION
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

(Signed) GEORGE M. PONDER
GEORGE M. PONDER
FIRST ASSISTANT ATTORNEY
GENERAL FOR THE STATE
OF LOUISIANA

(Signed) WILLIAM P. SCHULER
WILLIAM P. SCHULER
ASSISTANT ATTORNEY
GENERAL FOR THE STATE
OF LOUISIANA

DEFENDANTS' AFFIDAVIT IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT

(Number and Title Omitted)

Received: May 14, 1957

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared

PROVOSTY A. DAYRIES,

Superintendent of Police of the City of New Orleans, who upon being duly sworn did depose and say:

That he is one of the defendants in the above entitled action, and makes this affidavit in support of the opposition filed on behalf of himself and DeLesseps S. Morrison, individually and as Mayor of the City of New Orleans; that he is Superintendent of Police of the City of New Orleans, and that of his own knowledge, plaintiffs Abraham L. Davis, Jr. and William R. Adams have not been arrested in connection with the violation of LSA-R.S. 45:194-196, inclusive, and LSA-R.S. 45:731-733, inclusive, Statutes of the State of Louisiana. Nor has he given any instruction to the Police Department of the City of New Orleans for the arrest of the aforementioned plaintiffs, nor has he received any recommendations or instructions from DeLesseps S. Morrison, Mayor, concerning the arrest of Abraham L. Davis, Jr. and William R. Adams for violation of LSA-R.S. 45:194-

196, inclusive, and LSA-R.S. 45:731-733, inclusive, Statutes of the State of Louisiana.

(Signed) PROVOSTY A. DAYRIES

Sworn to and subscribed before
me this 14th day of May, 1957.

(Signed) ALVIN J. LISKA
Alvin J. Liska, Notary Public

MINUTE ENTRY Wright, J:

May 15, 1957

HEARING ON MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT AND MOTION OF CITY OF NEW ORLEANS TO DISMISS - ARGUMENT - ORDER GRANTING DECLARATORY JUDGMENT ALONG WITH PERMANENT INJUNCTION

(Number and Title Omitted

This cause came on this day to be heard on motion of plaintiff for summary judgment and motion of City of New Orleans to dismiss.

Present: A. P. Tureaud, Esq.,
Attorney for Plaintiffs
Alvin J. Liska, Esq.,
Attorney for City of N. O.

Argument;

IT IS THE JUDGMENT OF THE COURT that all State Statutes which require segregation on transportation facilities in the City of New Orleans, and particularly those transportation facilities operated by the Defendant New Orleans Public Service Company, are unconstitutional and therefore invalid.

The Declaratory Judgment shall issue along with the permanent injunction.

(Signed) J S W

RULING OF THE COURT

THE COURT:

The Court is ready to rule unless Counsel for any party wants to be heard.

Counsel have argued that since no one has been arrested for violating the laws requiring segregation on the buses, no issue is presented for decision by this Court.

It is not this Court's view that in our civilization it is necessary to have incidents requiring arrests to have the rights of people declared. Here we have the defendants in the case, or, at least, one of them, indicating that it is operating under State Laws which require segregation in the buses, and pursuant to those laws signs have been used in the buses, are being used in the buses, and will continue to be used in the buses to enforce that segregation. The Mayor of the City of New Orleans and the Chief of his

Police Force have sworn to uphold those laws. As long as those laws have not been declared invalid, the situation will remain in status quo, and segregation will be enforced as a matter of course on the buses.

Consequently, there is before the Court a justiciable controversy. This matter is ripe for Declaratory Judgment. Moreover, it is ripe for injunction.

It is the Judgment of the Court that all State Statutes which require segregation on transportation facilities in the City of New Orleans, and particularly those transportation facilities operated by the Defendant New Orleans Public Service Company, are unconstitutional and therefore invalid. The Declaratory Judgment shall issue along with the permanent injunction.

JUDGMENT

(Number and Title Omitted)

Filed: May 24, 1957

This cause came on for hearing on plaintiffs' motion for summary judgment.

The Court, having carefully considered the pleadings, the record heretofore made in this cause, oral arguments and submission of the briefs by all parties and, after being fully advised in the premises, found in its opinion handed down orally on May 15, 1957 that the enforced segregation of

Negro passengers solely because of race and/or color on buses, street cars, or street railways and trolley buses operating within the City of New Orleans, State of Louisiana, as required by La. R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733, violates the Constitution and laws of the United States.

Now in accordance with that opinion it is ORDERED, ADJUDGED AND DECREED that all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses operating within the City of New Orleans are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, their successors in office, assigns, agents, servants, employees and persons acting on their behalf, be and they are hereby permanently enjoined and restrained (1) from enforcing the aforesaid statutes requiring plaintiffs and other Negroes similarly situated to submit to segregation in the use of the buses, street cars, street railways and trolley buses, in the City of New Orleans, and (2) from doing any acts or taking any action which would require any public transportation facility, or its drivers, to segregate white and Negro passengers in the operation of buses, street cars, street railways, or trolley buses in the City of New Orleans, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment shall become effective when it shall have become final after exhaustion of appeals.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this judgment be served upon each of said defendants.

IT IS FURTHER ORDERED that defendants pay all costs.

(Signed) J. SKELLY WRIGHT
UNITED STATES
DISTRICT JUDGE

New Orleans, Louisiana
May 24, 1957

MOTION FOR A REHEARING AND FOR A NEW TRIAL

(Number and Title Omitted)

Filed: May 31, 1957

Defendant, deLESSEPS S. MORRISON, individually and as Mayor of the City of New Orleans and PROVOSTY A. DAYRIES, individually and as Superintendent of Police and NEW ORLEANS PUBLIC SERVICE, INC. move the Court to set aside the findings of fact, conclusions of law and judgment entered herein on the 24th day of May, 1957

and to grant defendants a rehearing and new trial on the grounds:

1.

That the Court erred in rendering summary judgment in this matter in view of the fact that there are no allegations in the complaint and there is no proof in the record of specific instances in which plaintiffs or any other negroes were compelled by defendants, their agents or employees at any time to segregate from white patrons using public transportation facilities and therefore there exists a substantial issue of fact concerning the complaint filed herein and the supporting affidavits annexed thereto.

2.

The Judgment is contrary to law in that plaintiffs were granted a declaratory judgment without first establishing that there existed a justicable controversy entitling them to a declaratory judgment. Theodore Gibson, Jr., et al. Vs. Board of Public Instruction of Dade County, Fla. S. S. Dist. Ct. So. Dist., Fla. Nov. 29, 1956, No. 6978-M Civil, Vol. 2, Race Relations Law Reporter, page 9; Whitter vs. West Plaints, Mo., 137 Fed. 2d 938.

3.

The Judgment is contrary to law in that plaintiffs were granted a permanent injunction without first showing that there was danger of suffering irreparable injury. Linehan vs. Waterfront Commission of New York Harbor, 116, Fed. Supp. 401-404; Douglas vs. City of Jeannette, 319 U. S.

157, 163-164, 33 S. Ct. 877, 882, 87 L. Ed. 1324; Beal vs. Missouri Pacific R. R. Corporation, 312 U. S. 45; 49-50, 61 S. Ct. 418, 85 L. Ed. 577; Spielman Motor Sales Co. Vs. Dodge 295 U. S. 89-95, 55 S. Ct. 678, 79 L. Ed. 1322.

4.

That the Court erred in not dismissing the New Orleans Public Service, Inc. as a party defendant since the ultimate relief sought herein was a declaration of the constitutionality of State law and an injunction of the enforcement of that law, which type of relief can be granted only against the proper legal public authorities responsible for the enforcement of this law. Garmon, et al. vs. Miami Transit Co., Inc. et al., U. S. Dist. Ct. So. Dist., Fla. Jan. 4, 1957, Civil No. 7210-M. Vol. 2 Race Relations Law Reporter, page 129.

WHEREFORE, defendants pray that the Opinion and Decree rendered herein on May 24, 1957 be reconsidered and set aside and that a new trial and rehearing be granted herein to consider the errors urged above, and on final hearing that an Order issue dismissing the suit of the plaintiffs at their costs; for all Orders and Decrees necessary and for general and equitable relief.

Respectfully submitted,

(Signed) HENRY B. CURTIS
HENRY B. CURTIS
OF COUNSEL

(Signed) ALVIN J. LISKA
ALVIN J. LISKA
CITY ATTORNEY

(Signed) JOSEPH H. HURNDON
JOSEPH H. HURNDON
ASSISTANT CITY ATTORNEY

(Signed) JACK P. F. GREMILLION
JACK P. F. GREMILLION,
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

(Signed) GEORGE M. PONDER
GEORGE M. PONDER,
FIRST ASSISTANT ATTORNEY
GENERAL FOR STATE OF
LOUISIANA

(Signed) WILLIAM P. SCHULER
WILLIAM P. SCHULER
ASSISTANT ATTORNEY
GENERAL FOR STATE OF
LOUISIANA

(Signed) GIBBONS BURKE RS
GIBBONS BURKE of CAFFEE,
McCALL, PHILLIPS, BURKE
& HOPKINS

(Signed) ARTHUR J. WAECHTER RS
ARTHUR J. WAECHTER of
JONES, WALKER, WAECHTER,
POITEVENT & DENEGRE

AMENDED JUDGMENT

(Number and Title Omitted)

Filed: June 14, 1957

Entered: June 17, 1957

IT IS ORDERED that the judgment formerly entered herein on May 24, 1957 be and the same is hereby amended as follows:

AMENDED JUDGMENT

This cause came on for hearing on plaintiffs' motion for summary judgment.

The Court, having carefully considered the pleadings, the record heretofore made in this cause, oral arguments and submission of the briefs by all parties and, after being fully advised in the premises, found in its opinion handed down orally on May 15, 1957 that the enforced segregation of Negro passengers solely because of race and/or color on buses, street cars, or street railways and trolley buses operated by the New Orleans Public Service in the State of Louisiana, as required by La. R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733, violates the Constitution and laws of the United States.

Now in accordance with that opinion it is ORDERED, ADJUDGED and DECREED that all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses are unconstitutional

and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendants, their successors in office, assigns, agents, servants, employees and persons acting on their behalf, be and they are hereby permanently enjoined and restrained (1) from enforcing the aforesaid statutes requiring plaintiffs and other Negroes similarly situated to submit to segregation in the use of the buses, street cars, street railways and trolley buses, and (2) from doing any acts or taking any action which would require any public transportation facility, or its drivers, to segregate white and Negro passengers in the operation of buses, street cars, street railways, or trolley buses in the State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this judgment shall become effective when it shall have become final after exhaustion of appeals.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that a copy of this judgment be served upon each of said defendants.

IT IS FURTHER ORDERED that defendants pay all costs.

(Signed) J. SKELLY WRIGHT
UNITED STATES
DISTRICT JUDGE

New Orleans, Louisiana
June 14, 1957

MINUTE ENTRY: Wright, J:

June 12, 1957

HEARING ON MOTION FOR NEW TRIAL AND ORDER DENYING SAME

(Number and Title Omitted)
Entered: June 18, 1957

This cause came on this day to be heard on motion of defendants for a rehearing and for a new trial.

Present: A. P. Tureaud, Esq.,
Attorney for Plaintiff

Henry B. Curtis, Esq.,
Alvin J. Liska, Esq.,
Harry McCall, Esq.,
Attorneys for defendants.

Argument;

IT IS ORDERED by the Court that the motion of Defendants for a rehearing and for a new trial be and the same is hereby DENIED.

(Signed) JSW

NOTICE OF APPEAL

(Number and Title Omitted)

Filed: June 21, 1957

Notice is hereby given that deLESSEPS S. MORRISON, individually and as Mayor of the City of New Orleans, PROVOSTY A. DAYRIES, individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service Inc., a corporation, defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Opinion and Decree entered in this action on May 29, 1957, Motion for rehearing or new trial having been denied June 12, 1957.

(Signed) ALVIN J. LISKA
ALVIN J. LISKA
CITY ATTORNEY

(Signed) JOSEPH H. HURNDON
JOSEPH H. HURNDON
ASSISTANT CITY ATTORNEY

(Signed) JACK P. F. GREMILLION
JACK P. F. GREMILLION,
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

(Signed) GEORGE M. PONDER
GEORGE M. PONDER,
FIRST ASSISTANT ATTORNEY
GENERAL FOR STATE OF
LOUISIANA

(Signed) WILLIAM P. SCHULER
WILLIAM P. SCHULER,
ASSISTANT ATTORNEY
GENERAL FOR STATE OF
LOUISIANA

(Signed) GIBBONS BURKE
GIBBONS BURKE of CAFFEE,
McCALL, PHILLIPS, BURKE
& HOPKINS
ATTORNEY FOR NEW
ORLEANS PUBLIC SERVICE
INC.

(Signed) ARTHUR J. WAECHTER
ARTHUR J. WAECHTER of
JONES, WALKER, WAECHTER,
POITEVENT & DENEGRE AT-
TORNEY FOR NEW ORLEANS
PUBLIC SERVICE INC.

DESIGNATION OF RECORD ON APPEAL

(Number and Title Omitted)

Filed. June 25, 1957

Appellant designates the entire record of these proceedings to be contained in the record on appeal in this action.

(Signed) ALVIN J. LISKA
ALVIN J. LISKA,
CITY ATTORNEY

(Signed) JOSEPH H. HURNDON
JOSEPH H. HURNDON
ASSISTANT CITY ATTORNEY

(Signed) JACK P. F. GREMILLION
JACK P. F. GREMILLION,
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

(Signed) GEORGE M. PONDER
GEORGE M. PONDER,
FIRST ASSISTANT ATTORNEY
GENERAL FOR STATE OF
LOUISIANA

(Signed) WILLIAM P. SCHULER
WILLIAM P. SCHULER,
ASSISTANT ATTORNEY
GENERAL FOR STATE OF
LOUISIANA

(Signed) GIBBONS BURKE
GIBBONS BURKE of CHAFFE,
McCALL, PHILLIPS, BURKE
& HOPKINS
ATTORNEY FOR NEW OR-
LEANS PUBLIC SERVICE, INC.

(Signed) ARTHUR J. WAECHTER
ARTHUR J. WAECHTER of
JONES, WALKER, WAECHTER,
POITEVENT & DENEGRE, AT-
TORNEY FOR NEW ORLEANS
PUBLIC SERVICE INC.

CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN, JR., Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify the foregoing 54 pages to contain a true and correct copy of the record in the case entitled "Abraham L. Davis, Jr., et al. -vs- deLesseps S. Morrison, etc. et al." No. 6418 of the Civil Action Docket of this Court, as made up in accordance with the Designation of Contents copied herein.

WITNESS MY HAND and the seal of said Court at the City of New Orleans, Louisiana, this 18 day of ~~August~~ Sept., 1957.

A. DALLAM O'BRIEN, JR.,
Clerk

By _____
Deputy Clerk

(SEAL OF COURT)

LIBRARY
SUPREME COURT. U. S.

FILED
MAY 6 1958
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 980

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deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service Inc.,

Petitioners,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ALVIN J. LISKA,
City Attorney,
Trial Attorney,
JOSEPH H. HURNDON,
Assistant City Attorney,
ERNEST L. SALATICH,
Assistant City Attorney,
JACK P. F. GREMILLION,
Attorney General for State of Louisiana,
WILLIAM P. SCHULER,
Assistant Attorney General for State of Louisiana,
GIBBONS BURKE,
A. J. WAECHTER,
FLOYD W. LEWIS,
Attorneys for New Orleans Public Service Inc.

SUBJECT INDEX

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AUTHORITIES CITED.

Cases:

Douglas vs. City of Jeannette (Penn.) et al, 319 U.S. 157 63 S. Ct. 877, 87 L.E. 1324 .. 2, 6

Statutes:

Louisiana Revised Statutes of 1950, Title 45, Sections 45:194, 45:195 and 45:196, and Sections 45:731, 45:732, 45:733 .....2, 3, 6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No. .....

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deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service Inc.,

Petitioners,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioners, deLesseps S. Morrison, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service, Inc. pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on February 19, 1958.

CITATIONS TO OPINIONS BELOW.

The decree of the United States District Court for the Eastern District of Louisiana, Honorable J. Shelly Wright presiding and the judgment amending said decree are unreported but are printed in Appendix "B" hereto, pages 12, et seq. The opinion and decree of the United States Court of Appeals for the Fifth Circuit rendered and entered on February 19, 1958 are reported in 252 Fed. 2d, at page 102 and are printed in Appendix "B" hereto, pages 17, et seq.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 19, 1958 (Tr. p. 57). Rehearing was denied on March 28, 1958 (Tr. p. 70). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED.

Where the relief sought is in equity to enjoin the enforcement of a state penal statute can a federal court grant the relief prayed for in view of the doctrine set forth in *Douglas, et al. vs. The City of Jeannette (Penn.) et al.*, 319 U. S. 157, 63 S. Ct. 877, 87 L.Ed. 1324?

STATUTES INVOLVED.

Louisiana Revised Statutes of 1950, Sections 45:194, 195 and 196 and L.R.S. Sections 45:731, 732 and 733 providing for a system of equal but separate accommodations for white and colored races on public carriers in the

State of Louisiana printed herein in Appendix "A" at pages 9, et seq.

STATEMENT.

Respondents, Abraham L. Davis, Jr. and William R. Adams, on February 1, 1957, filed a complaint, pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure, for themselves and on behalf of all other negro citizens similarly situated, in the United States District Court for the Eastern District of Louisiana against de-Lesseps S. Morrison, individually and as Mayor of the City of New Orleans; Paul Burke; Fred J. Cassibry; Glen P. Classen; Walter M. Duffourc; James E. Fitzmorris, Jr. and Victor H. Schiro, individually and as Councilmen of the City of New Orleans; Paul L. Ristroph, individually and as Director of Utilities, Department of Utilities of the City of New Orleans; Provosty A. Dayries, individually and as Superintendent of Police of the City of New Orleans; and New Orleans Public Service, Inc. and George S. Dinwiddie, its president seeking a temporary and permanent injunction to enjoin and restrain the petitioners, their agents and employees from enforcing LSA R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733 of the State of Louisiana pursuant to which respondents and all other negro citizens of the City of New Orleans are segregated in and on the buses, street cars or street railroads and trolley buses of the New Orleans Public Service, Inc. on the ground that such statutes are null and void and in violation of the Fourteenth Amendment of the Constitution of the United States, and seeking a final judgment and decree declar-

ing LSA R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733 of the State of Louisiana unconstitutional and therefore null and void in that they deny to the plaintiffs and all other negro citizens of the City of New Orleans privileges and immunities of citizens of the United States, due process of law and equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States and the rights and privileges secured to them by Sections 1981 and 1983 of Title 42 United States Code. (Tr. pp. 2-14.)

On March 22, 1957 Answers were filed on behalf of New Orleans Public Service, Inc. and George S. Dinwiddie. (Tr. pp. 15-20.)

On April 17, 1957 a hearing was held on the motion of certain defendants to dismiss. As a result of this hearing the Motion to Dismiss was granted as to Paul Burke, Fred J. Cassibry, Glenn P. Classen, Walter Duffourc, James E. Fitzmorris, Jr., Victor H. Schiro, individually and as Councilmen of the City of New Orleans and Paul E. Ristroph, individually and as Director of Utilities, Department of Utilities, City of New Orleans. (Tr. pp. 26-27.)

Answers were filed on behalf of petitioners, deLesseps S. Morrison, individually and as Mayor of the City of New Orleans and Provosty A. Dayries, individually and as Superintendent of Police of the City of New Orleans on April 23, 1957. (Tr. pp. 27-28.)

On May 2, 1957 by joint motion of attorneys representing plaintiffs and attorneys representing defendant,

George S. Dinwiddie, the complaint was dismissed as to defendant, George S. Dinwiddie. (Tr. pp. 29-30.)

Respondents, on May 6, 1957 moved the Court to enter a summary judgment for plaintiffs. (Tr. pp. 30-31.)

On May 13, 1957, petitioners filed opposition to Respondents' Motion for Summary Judgment. (Tr. pp. 36-37.)

On May 15, 1957 Summary Judgment was rendered declaring all state statutes requiring segregation on transportation facilities in the City of New Orleans and particularly those transportation facilities operated by the New Orleans Public Service Inc. unconstitutional and therefore invalid. (Tr. pp. 41-42.)

Judgment was granted as prayed for and the permanent injunction issued.

On May 24, 1957 an Order consistent with the Court's findings was issued. The judgment contained a provision that it should "become effective when it shall have become final after exhaustion of appeals." (Tr. pp. 42-44.)

Petitioners, on May 31, 1957, filed a Motion for a Rehearing and a New Trial which Motion was denied after hearing on June 12, 1957 and judgment was entered on June 17, 1957 denying same. (Tr. pp. 44-51.)

On June 21, 1957 petitioners gave Notice of Appeal (Tr. pp. 51-52) and on June 25, 1957 designated in writ-

ing to the Clerk of Court that the entire record was to be used on Appeal. (Tr. pp. 53-54.)

After the submission of briefs and oral argument Circuit Judges Hutcheson, Tuttle and Jones, on February 19, 1958 issued their opinion and entered judgment affirming the decision of the District Court (see Tr. pp. 57-60 and appendix hereto). Thereafter, petitioners filed a petition for rehearing on March 11, 1958 (Tr. pp. 61-63). On March 28, 1958 the Court entered an Order denying the petition for rehearing. (Tr. p. 70.)

REASONS FOR GRANTING WRIT.

The decree of the Court of Appeals affirming the judgment of the District Court which issued a permanent injunction restraining petitioners from enforcing Louisiana Revised Statutes *R.S. 45:195-196, inclusive and R.S. 45:731-733 inclusive* is in conflict with a principle of law firmly imbedded in the jurisprudence of this Court. This Court has laid down the principle that federal courts of equity will not restrain the enforcement of state criminal statutes save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent. *Douglas, et al. vs. City of Jeannette (Pennsylvania) et al.*, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943).

The statutes involved herein are penal or criminal in nature and can only be enforced by arrest and prosecution of persons violating same. The relief sought by respondents is to enjoin petitioners from enforcing said

statutes which in effect would be to enjoin petitioners from arresting or prosecuting persons who violate same. Respondents cannot show and have not shown that they will suffer any injury other than that incidental to every criminal proceeding brought lawfully and in good faith; which under the Douglas Decision is insufficient to call for the interposition of a Court of equity to grant the relief sought.

It is submitted that *Douglas, et al, supra,* decided by this Court cannot be distinguished from the instant case; the issues are identical.

The Court of Appeals erred in not adhering to said decision.

To deviate from the precedent set by the Douglas decision as the Court of Appeals has done in the instant case would be to burden Federal courts with a multitude of suits which at present they need not entertain. Every individual aggrieved by a state penal statute will seek injunctive relief in Federal court placing upon Federal courts the burden of determining the validity of state penal legislation even before an arrest is made pursuant to said statutes.

It is only when the state itself, through its courts, has refused to recognize the constitutional rights of the individual being prosecuted for the violation of a state penal statute should this court pass on the validity of said statute.

CONCLUSION.

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ALVIN J. LISKA,
City Attorney,
Trial Attorney,
JOSEPH H. HURNDON,
Assistant City Attorney,
ERNEST L. SALATICH,
Assistant City Attorney,
JACK P. F. GREMILLION,
Attorney General for State of Louisiana,
WILLIAM P. SCHULER,
Assistant Attorney General for State of Louisiana,
GIBBONS BURKE,
A. J. WAECHTER,
FLOYD W. LEWIS,
Attorneys for New Orleans Public Service Inc.

PROOF OF SERVICE.

I, ALVIN J. LISKA, one of the attorneys for petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Petition for Writ of Certiorari on A. P. Tureaud, Esquire, Counsel for respondents, by mailing a copy thereof, postage prepaid, addressed to his office at 1821 Orleans Avenue, New Orleans, Louisiana.

Dated this .... day of May, 1958.

.....

ALVIN J. LISKA,
City Attorney,
Attorney for Petitioners.

APPENDIX "A".

Louisiana Revised Statutes.

45:194. "All persons carrying passengers for hire in their buses, carriages or vehicles in this state shall provide equal but separate accommodations for the white and colored races by designating separate seats or compartments so as to secure separate accommodations for the white and colored races; no person shall be permitted to occupy seats or compartments other than the ones so designated."

45:195. "The person in charge of busses, carriages or vehicles mentioned in R.S. 45:194 shall assign each passenger to a seat or compartment used for the race to which such passenger belongs.

"Any passenger insisting upon going into a seat or compartment to which by race he does not belong, shall be fined twenty-five dollars or imprisoned for not more than thirty days.

"If any passenger refuses to occupy the seat or compartment to which he is assigned by the person in charge of such bus, carriage or vehicle, the person in charge may refuse to carry the passenger on his car or cars, and for such refusal neither he nor the person he represents shall be held for damages in this state.

"Any person in charge of a bus, carriage or vehicle insisting on assigning a person to a seat or compartment other than the one set aside for the race to which the passenger belongs, shall be fined twenty-five dollars or imprisoned for not more than thirty days."

45:196. "All officers and directors of persons carrying passengers for hire over the public highways of the state, refusing or neglecting to comply with the provisions of R.S. 45:194 through 45:195 shall be fined not less than fifty dollars, nor more than three hundred dollars, or imprisoned for not less than ten days nor more than sixty days, or both."

45:731. "All street railway companies carrying passengers in cars in this state shall provide equal but separate accommodations for the white and colored races by providing two or more cars or by dividing the cars by wooden or wire screen partitions so as to secure separate accommodations for the white and colored races. No person shall be permitted to occupy seats in cars or compartments other than the ones assigned to them on account of the race to which they belong."

45:732. "The officers of street railway cars shall assign each passenger to the car or compartment used for the race to which the passenger belongs.

"Any passenger insisting upon going into a car or compartment to which by race he does not belong shall be fined twenty-five dollars, or imprisoned for not more than thirty days, and any officer of any street railway insisting on assigning a passenger to a car or compartment other than the one set aside for the race to which the passenger belongs, shall be fined twenty-five dollars, or imprisoned for not more than thirty days.

"If any passenger refuse to occupy the car or compartment to which he is assigned by the officer of such street railway, the officer may refuse to carry such passenger on his car, and for such refusal neither he nor the street railway company which he represents shall be liable for damages."

45:733. "All officers and directors of street railway companies refusing to comply with R.S. 45:731 and 45:732 shall be fined not less than one hundred dollars, or imprisoned for not less than sixty days nor more than six months. Any conductor or other employee of a street railway car having charge of same, who refuses to carry out the provisions of R.S. 45:731 and 45:732 shall be fined not less than twenty-five dollars, or imprisoned for not less than ten days nor more than thirty days for each offense. All street railway corporations carrying passengers in this state shall keep this law posted in a conspicuous place in each car and at their transfer stations.

"Nothing in R.S. 45:731 and 45:732 shall apply to nurses attending children of the other race."

APPENDIX "B".

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 6418, CIVIL ACTION.

ABRAHAM L. DAVIS, JR., et al.,

versus

de LESSEPS S. MORRISON, etc.

JUDGMENT.

This cause came on for hearing on plaintiffs' motion for summary judgment.

The Court, having carefully considered the pleadings, the record heretofore made in this cause, oral arguments and submission of the briefs by all parties and, after being fully advised in the premises, found in its opinion handed down orally on May 15, 1957 that the enforced segregation of Negro passengers solely because of race and/or color on buses, street cars, or street railways and trolley buses operating within the City of New Orleans, State of Louisiana, as required by La. R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733, violates the Constitution and laws of the United States.

Now in accordance with that opinion it is ORDERED, ADJUDGED AND DECREED that all laws of the State

of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses operating within the City of New Orleans are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, their successors in office, assigns, agents, servants, employees and persons acting on their behalf, be and they are hereby permanently enjoined and restrained (1) from enforcing the aforesaid statutes requiring plaintiffs and other Negroes similarly situated to submit to segregation in the use of the buses, street cars, street railways and trolley buses, in the City of New Orleans, and (2) from doing any acts or taking any action which would require any public transportation facility, or its drivers, to segregate white and Negro passengers in the operation of buses, street cars, street railways, or trolley buses in the City of New Orleans, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment shall become effective when it shall have become final after exhaustion of appeals.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this judgment be served upon each of said defendants.

IT IS FURTHER ORDERED that defendants pay all costs.

J. SKELLY WRIGHT,
United States District Judge.

New Orleans, Louisiana,
May 24, 1957.

TO: DeLesseps S. Morrison, Individually and as Mayor of the City of New Orleans.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 6418, CIVIL ACTION.

ABRAHAM L. DAVIS, JR., et al.,

versus

de LESSEPS S. MORRISON, etc.

IT IS ORDERED that the judgment formerly entered herein on May 24, 1957 be and the same is hereby amended as follows:

AMENDED JUDGMENT.

This cause came on for hearing on plaintiffs' motion for summary judgment.

The Court, having carefully considered the pleadings, the record heretofore made in this cause, oral arguments

and submission of the briefs by all parties and, after being fully advised in the premises, found in its opinion handed down orally on May 15, 1957 that the enforced segregation of Negro passengers solely because of race and/or color on buses, street cars, or street railways and trolley buses operated by the New Orleans Public Service in the State of Louisiana, as required by La. R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45733, violates the Constitution and laws of the United States.

Now in accordance with that opinion is it ORDERED, ADJUDGED and DECREED that all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendants, their successors in office, assigns, agents, servants, employees and persons acting on their behalf, be and they are hereby permanently enjoined and restrained (1) from enforcing the aforesaid statutes requiring plaintiffs and other Negroes similarly situated to submit to segregation in the use of the buses, street cars, street railways and trolley buses, and (2) from doing any acts or taking any action which would require

any public transportation facility, or its drivers, to segregate white and Negro passengers in the operation of buses, street cars, street railways, or trolley buses in the State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this judgment shall become effective when it shall have become final after exhaustion of appeals.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that a copy of this judgment be served upon each of said defendants.

IT IS FURTHER ORDERED that defendants pay all costs.

J. SKELLY WRIGHT,
United States District Judge.

New Orleans, Louisiana,
June 14, 1957.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16886

deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, PROVOSTY A. DAYRIES, Individually and as Superintendent of Police of the City of New Orleans and NEW ORLEANS PUBLIC SERVICE, INC.

Appellants,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 19, 1958.)

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

PER CURIAM: This appeal from a final injunction following a summary judgment for the plaintiffs declaring unconstitutional all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses, and enjoining defendant officials and public service corporations from enforcing

such statutes is controlled in all respects by *Browder et al v. Gayle et al,* the City of Montgomery bus case, 142 F. Supp. 707, affirmed without opinion by the Supreme Court in 352 U. S. 903.

That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. §1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with *Douglas v. City of Jeannette, et al,* 319 U.S. 157, we must consider the earlier case modified. Moreover we think the trial court here properly held: "It is not the Court's view that in our civilization it is necessary to have incidents requiring arrests to have the rights of people declared." These plaintiffs are not being prosecuted; they have not violated the state law; they are seriously affected by the provision of the statute which places a criminal penalty on the street car operators who permit them to travel on a street car without complying with the unconstitutional statute. They are asking relief from such constraint. Since all transportation can be denied them under the statute unless they obey the ille-

gal requirement, it is not even apparent that they could put themselves in position to be arrested and prosecuted even if they sought to test their constitutional rights in that manner, which we hold they do not have to do.

The only other contention raised by appellants here are either ruled by the cases affecting admission to state educational institutions, or are so plainly and fully disposed of in the Montgomery bus case as not to require further elaboration here.

The judgment is AFFIRMED.

LIBRARY
SUPREME COURT, U. S.

FILED
JUN 14 1958
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 980

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deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans and PROVOSTY A. DAYRIES, Individually and as Superintendent of Police of the City of New Orleans,

Petitioners,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION OF RE-HEARING.

ALVIN J. LISKA,
City Attorney,
Trial Attorney,
JOSEPH H. HURNDON,
Assistant City Attorney,
ERNEST L. SALATICH,
Assistant City Attorney,
JACK P. F. GREMILLION,
Attorney General for State of Louisiana,
WILLIAM P. SCHULER,
Assistant Attorney General for State of Louisiana.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 980.

---

deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans and PROVOSTY A. DAYRIES, Individually and as Superintendent of Police of the City of New Orleans,

Petitioners,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION OF RE-HEARING.

Petitioners, deLesseps S. Morrison, individually and as Mayor of the City of New Orleans, and Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, present their petition for a re-hearing of this Court's order dated May 26, 1958 denying the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, and, in support thereof, respectfully show:

GROUNDS FOR RE-HEARING.

The United States Circuit Court of Appeals for the Fifth Circuit erred in affirming the Summary Judgment rendered herein by the U. S. District Court for the Eastern District of Louisiana, as a substantial issue of fact had been raised by the pleadings.

A summary judgment is never warranted unless it is clear that no genuine issue as to any material fact remains for trial.

Chappell v. Goltsman, 186 Fed. (2d) 215;
Williamson v. T.S.C. Motor Freight, 203 Fed. (2d) 257;
Slagle v. U. S., 228 Fed. (2) 673.

Respondents brought this action pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure for themselves and on behalf of all other negro citizens similarly situated seeking common relief based upon common questions of law and fact.

The necessarily material elements of fact are that respondents are members of the negro race; that they are patrons of the public transportation facilities operated by the New Orleans Public Service, Inc.; and that as negroes they are segregated from white passengers using these public transportation facilities.

It is essential to the maintenance of a class action that there be an identity or community of interest between parties bringing the action and those in whose

behalf it is brought. The representative should be similarly situated, possess the same qualifications and must have an interest which is co-extensive with other members of the class. To maintain this action as a true class action, respondents must establish that they are members of the negro race and that they are users of the public transportation system of the City of New Orleans.

As proof of these material elements of the class action, brought by them, respondents have submitted only their own affidavits that they are members of the negro race and that they use and intend to use in the future the public transportation facilities of the City of New Orleans operated by New Orleans Public Service, Inc. No further evidence has been presented nor have petitioners been afforded an opportunity to establish anything to the contrary or to challenge these statements.

Until it is uncontrovertibly proven that respondents are in fact users of the public transportation facilities in the City of New Orleans they have no right to bring this action as representatives of a class which they have not proven themselves to be members of.

It is well established that class actions may be brought by one or more members representing the class, but in all instances such actions must be brought by persons similarly situated or possessing the same or similar qualifications as all other members of the class on behalf of which the action was brought.

Brown vs. Board of Trustees of LaGrange Independent School, 187 F. (2d) 20 (1951).

THE FIFTH CIRCUIT COURT OF APPEALS, in its opinion at p. 25, said:

> "All of these considerations, however, are completely beside the mark here, for plaintiff has wholly failed to plead or prove any deprivation of his civil rights and it is elementary that he has no standing to sue for the deprivation of the civil rights of others. What the Supreme Court said in McCabe v. Atchison T. & S. F. Ry. Co., 235 U.S. 151 at pages 161-162 and 164, 35 S. Ct. 69, 71, 59 L.Ed. 169 and quoted with approval in State of Mo. ex rel. Gaines v. Canada, 305 U.S. 337, 351, 59 S. Ct. 232, 83 L. Ed. 208, has precise application here:
>
> > 'It is the individual who is entitled to the equal protection of the laws, and if he is denied. . . a facility or convenience . . . which, under substantially the same circumstances, is furnished to another traveler, he may properly complain that his constitutional privilege has been invaded.
> >
> > 'There is, however, an insuperable obstacle to the granting of the relief sought by this bill. It was filed, as we have seen, by five persons against five railroad corporations to restrain them from complying with the state statute . . . It states that there will be "a multiplicity of suits", there being at least "fifty thousand persons of the negro race in the state of Oklahoma" who will be injured and deprived of their civil rights. But we are dealing here with the case of the complainants, and nothing is shown to entitle them to an injunction. It is an elementary principle that, in

> order to justify the granting of this extraordinary relief, the complainant's need of it, and the absence of an adequate remedy at law, must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant—not to others—which justifies judicial intervention. . .
>
> '. . .The desire to obtain a sweeping injunction cannot be accepted as a substitute for compliance with the general rule that the complainant must present facts sufficient to show that his individual need requires the remedy for which he asks . . .'"

The rationale of decision of the Supreme Court of the United States in *Brown, et al. vs. Board of Education of Topeka,* 74 S. Ct. 686, 347 U.S. 483, 98 L.E. 873 seems limited to the conclusion that in the field of public education the doctrine of separate but equal has no place.

In reaching this conclusion the court considered the psychological effect of segregation on the negro student and determined that the policy of separating the races is usually interpreted as denoting the inferiority of the negro group, that a feeling of inferiority affected the motivation of a child to learn and therefore segregation in schools had the tendency to retard the educational and mental development of negro children.

It is difficult to conceive how separate seating accommodations on public transportation facilities can have

the same or even a similar effect on any segment or age group of the negro population.

Evidence can be adduced which will establish beyond contradiction that the facilities afforded to both negroes and whites on public buses and street cars in the City of New Orleans are on an equal basis.

Petitioners should be permitted to establish the complete lack of discrimination as to the negro passengers on the public transportation facilities of the City of New Orleans and to show the equality of facilities afforded both negro and white passengers on public vehicles.

No distinction is made between white and negro passengers at loading stations. Both negro and white patrons use the same exits and entrances without distinction. Any passenger may select a seat of his own preference or standing room to his liking on crowded vehicles and is not compelled to occupy only specific seats or standing space because of his race.

The transportation system in New Orleans is operated on a basis comparable to the transportation system of the City of Tallahassee, Florida, however, the system here is more favorable to the negro passenger for he may choose a seat to his liking rather than be confined to a reserved seat to which he is assigned by the bus operator.

Further, petitioners should be afforded the opportunity to present expert testimony indicative of the fact that there can be no detrimental psychological effect on the

negro as a result of affording separate but equal facilities on public conveyances.

If the psychological effect on the negro as a result of segregation in public transportation is a factor to be considered in outlawing segregation, certainly then the mental attitude of both negro and white passengers as to integration is an element for consideration before determining whether or not segregation on public vehicles should be abolished.

White and negro residents have for many years used the transportation facilities of the City of New Orleans on a segregated and equal basis and have done so in harmony.

The record in this case evidences no instances of negro passengers on public vehicles expressing discontent with the facilities afforded them, nor is there evidence of any arrests of negro citizens for refusing to ride on a segregated basis.

The history of public transportation in the City of New Orleans shows agreement and approval on the part of both negro and white citizens to a system operated on a basis of affording equal facilities.

The District Court erred in rendering summary judgment in this matter simply on the complaint and affidavits filed by plaintiffs and without viewing this problem as a whole by hearing evidence concerning the attitudes and desires of the average negro citizen con-

cerning separate but equal facilities on public transportation. It could develop that plaintiffs represent but a small segment of the negro population who desire a change in the seating arrangements on public vehicles whereas the majority of the negroes, as well as the white population, in the City might very well be completely satisfied with present arrangements and desire them to remain unchanged. Assuming this to be true, it is difficult to conceive that the will of this minority group should be imposed on the entire population of the City of New Orleans with the likely possibility of completely disrupting the entire social order.

CONCLUSION.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit.

ALVIN J. LISKA,
City Attorney,
Counsel for Petitioners,
JOSEPH H. HURNDON,
Assistant City Attorney,
ERNEST L. SALATICH,
Assistant City Attorney,
JACK P. F. GREMILLION,
Attorney General for State of Louisiana,
WILLIAM P. SCHULER,
Assistant Attorney General for State of Louisiana.

CERTIFICATE OF COUNSEL.

I, ALVIN J. LISKA, counsel for the above-named petitioners, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

.....
ALVIN J. LISKA,
City Attorney,
Counsel for Petitioners.

PROOF OF SERVICE.

I, ALVIN J. LISKA, Counsel for petitioners and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Petition for Writ of Certiorari on A. P. Tureaud, Esquire, Counsel for respondents, by mailing a copy thereof, postage prepaid, addressed to his office at 1821 Orleans Avenue, New Orleans, Louisiana.

Dated this .... day of June, 1958.

.....
ALVIN J. LISKA,
City Attorney,
Attorney for Petitioners.